

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2730/1dn

RLR:kjf:pg

June 12, 2003

Kelley Willett and Krista Ginger:

1. Rather than making the changes in the criteria for determining indigency effective July 1, 2003, the bill makes the changes effective on the later of the day after the bill is published as an act or the day after the effective date of the 2003-05 biennial budget act. If July 1, 2003 is used as the effective date and the bill is enacted as an act before the budget act, the appropriation changes in the bill will be repealed by the budget act; if the bill is enacted as an act after July 1, 2003, the bill would require a retroactive change in indigency determinations. Do you want to change any of the other fixed dates in the bill to dates that are based on the effective date of the bill? For example, the SPD could charge counties for "Dean" case for the first 18 months after the effective date of the bill, rather than ending the reimbursement period on December 30, 2004.
2. Item 2 of the drafting instructions provides that the SPD will charge commitment clients \$60. I assumed that the \$60 fee should apply to all clients covered under proposed ss. 51.60 (1), 55.06 (11) (a), and 880.33 (2) (a) 2. The bill specifies the \$60 fee in statute. Would you prefer that the bill direct the Public Defender Board to promulgate rules establishing the fee amount so that the method for determining the fee is consistent with the method for determining other fees under s. 977.075?
3. This bill requires that the SPD provide any funds collected from clients in the "Dean" cases to the counties, as provided under the May 19, 2003, drafting instructions, rather than using the collections to fund SPD positions as suggested as an alternative in the May 23, 2003, drafting instructions. Please let me know if you prefer the alternative.
4. The bill requires that the SPD bill counties for "Dean" cases for which the SPD appoints counsel before December 31, 2004. Should the end date be before January 1, 2005, instead?
5. This bill repeals the newly created PR appropriations, proposed s. 20.550 (1) (j) and (ja), on July 1, 2005. Moneys encumbered from these appropriations before July 1, 2005 may be spent after July 1, 2005, but the unencumbered balances in the appropriation accounts will lapse to the general fund on July 1, 2005. Would you prefer that the bill transfer the unencumbered balances in these PR appropriations to another appropriation?
6. The drafting request specifies that for those cases for which the SPD must charge counties a fee, the county in which the defendant is "charged" must pay the fee. Do you want to specify which county must pay the fee in civil cases?

7. Section 977.07 (1) (a) provides that determinations of indigency shall be in accordance with the rules promulgated under s. 977.02 (3). The current rules, like the current statutes, tie indigency to AFDC benefit levels. Perhaps the Public Defender Board should exercise its emergency rule-making authority to update the rules to conform to the bill. Would you like to add a provision to the bill that exempts the board from the requirement under s. 227.24 (1) (a) that the board provide evidence that an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and the requirement under s. 227.24 (3) that the board make a statement of emergency, before the board may exercise its emergency rule-making authority? Do you want the bill to require that the board exercise its emergency rule-making authority to update the rules on indigency determination?

8. The bill repeals s. 977.08 (2) (d) because it is made redundant by the amendment of s. 977.08 (2) (intro.). Section 977.08 (2) (e) is similarly redundant under current law. Would you like the bill to repeal par. (e)?

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